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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

DAVID STIER,

Plaintiff and Appellant,

v.

THE PEOPLE,

Defendant and Respondent.

A122169

(Super. Ct. for the City & County of San Francisco No. 949)

This appeal has been from the trial court's denial of a petition for writ of mandate in which David Stier (hereafter plaintiff) seeks to be relieved of the duty to register as a sex offender. Plaintiff claims that his conviction for a sex offense in North Carolina does not require him to register under California law, and that the imposition of mandatory sex offender registration requirements on him violates equal protection guarantees. We conclude that plaintiff has made allegations and admissions in his pleading that bring him within the duty to register as a sex offender under Penal Code section 290.005, and no equal protection violation has been established. We therefore affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In 1995, plaintiff, a physician who resides in San Francisco, began an internet and telephone relationship with a woman "in her forties," who misrepresented to him that her name was "Jill Armstrong," and that she was "a freshman at Princeton." Plaintiff received photographs of Jill, in which "she appeared at least 18" years old. In February of 1996, while plaintiff traveled to a professional conference in North Carolina, he

arranged to meet Jill at a hotel. In fact, the girl he met was Jill's 14-year-old daughter Lauren. Jill had persuaded or coerced her daughter to meet men for sexual contact. According to the petition and an affidavit submitted by Lauren, during her meeting with plaintiff she did not disclose either her real name or that she was a minor, and based upon her appearance and demeanor plaintiff believed "she was 'Jill' " and "was an adult." Plaintiff and Lauren engaged in "consensual sexual intercourse" during this single encounter. Plaintiff thereafter had no further contact with Lauren or her mother Jill.

Several years later, a criminal investigation ensued in North Carolina during which plaintiff first learned the "truth of Lauren's identity, her age [and] her mother's deception."[1] As a result of the investigation, in March of 2000, plaintiff entered a guilty plea in North Carolina to the offense of "taking indecent liberties with a minor" in violation of North Carolina General Statutes, section 14-202.1.[2] Execution of sentence was suspended, and plaintiff was placed on supervised felony probation for two years. The North Carolina judgment of conviction does not specify that plaintiff must register as a sex offender, but plaintiff acknowledges that as of at least February of 2007, his name appears on "North Carolina's registration website," and thus "if he were residing in North Carolina, he would be required to register there."

Plaintiff's probation was thereafter transferred to San Francisco. He was advised by his probation officer in California that he was required to register as a sex offender under Penal Code section 290, and he did so thereafter. By 2002, plaintiff successfully completed his probation in the North Carolina case, but continued to register as a sex

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[1] Lauren's mother Jill arranged for three other men besides petitioner to meet and engage in sexual acts with Lauren. Jill was ultimately convicted and sent to state prison in North Carolina for offenses related to abuse of her daughter.

[2] North Carolina General Statutes, section 14-202.1, subdivision (a), provides: "A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either: [¶] (1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or [¶] (2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years."

offender as required. His duty to register terminates by operation of North Carolina law on March 10, 2010.

In 2003, Business and Professions Code section 2232 was enacted, which provides that the Medical Board "shall promptly revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code." In 2004, after Business and Professions Code section 2232 became effective, the California Medical Board commenced proceedings to revoke plaintiff's medical license due to his status as a sex offender registrant. Plaintiff filed a "petition for writ of habeas corpus on December 17, 2004, which requested an order directing the Police Department of San Francisco and the State of California to desist from requiring him to comply with the sex offender registration requirements of section 290." (*In re Stier* (2007) 152 Cal.App.4th 63, 71.) Plaintiff "alleged in the petition that his liberty is 'unlawfully restrained' and he is subject to 'constructive custody' or may face 'criminal prosecution' unless his duty to register is terminated." (*Ibid.*)

"On April 25, 2005, the trial court issued an order to show cause to the San Francisco District Attorney's Office and the California Attorney General's Office to appear and demonstrate 'why [plaintiff] should be required to register under PC § 290.' "[3] (*In re Stier, supra,* 152 Cal.App.4th 63, 71.) "The District Attorney subsequently filed written opposition to the petition. The Attorney General's apparent sole opposition to the petition was to file a declaration to the effect that no opinion had been given to [plaintiff] that he 'was not legally required to register as a sex offender,' and a review of registration documents indicated he 'is legally required to register as a sex offender.' " (*In re Stier, supra,*152 Cal.App.4th 63, 71–72.) At a hearing on October 5, 2005, the Attorney General did not appear, and the District Attorney withdrew opposition to the petition at the hearing. The trial court issued the judgment granting the writ of habeas corpus. (*Id.* at p. 72.)

[3] As we did in our prior opinion we will refer to the San Francisco District Attorney's Office as the District Attorney and the California Attorney General's Office as the Attorney General.

An appeal by the Attorney General followed. This court concluded that the judgment granting plaintiff habeas corpus relief was in excess of the trial court's authority in the absence of evidence he was in actual or constructive custody. (*In re Stier, supra,* 152 Cal.App.4th 63, 69.) We reversed the judgment and remanded the case to the trial court to grant plaintiff the opportunity to file an appropriate action.

The present petition for writ of mandate was filed on September 28, 2007. In it, plaintiff alleges that imposition of sex offender registration requirements on him "is unlawful" as applied to his conviction "under *People v. Hofsheier* (2006) 37 Cal.4th 1185" (*Hofsheier*). He has requested an order relieving him of the duty to register as a sex offender "as violative of equal protection under the state and federal Constitutions."

The trial court directed defendant to "show cause why [plaintiff] should be required to register as a sex offender and provide a record sufficient to resolve" the issue of whether the registration requirement violates his equal protection rights. The Attorney General subsequently filed an answer to the petition and a request for judicial notice of the North Carolina Sex Offender and Public Protection Registry, which lists plaintiff as a registered sex offender due to a conviction in Mecklenburg County on March 6, 2000, for taking indecent liberties with a minor. In response, plaintiff filed a traverse.

Without conducting a hearing the trial court concluded that the "mandatory registration requirement" imposed upon plaintiff for his conviction in North Carolina for a violation of the equivalent of section 288, subdivision (c)(1), did not constitute an equal protection violation under the principles articulated in the *Hofsheier* decision. The court found that plaintiff was not "similarly situated to someone convicted under section 261.5," which imposes discretionary registration, and therefore his equal protection "claim fails." This appeal followed.

DISCUSSION

I. Plaintiff's Duty to Register in California for his North Carolina Conviction.

We first confront a claim by plaintiff, which was not adjudicated in the trial court, that his North Carolina conviction did not trigger the sex offender registration requirements of California law. His argument proceeds thusly. As pertinent here, section

290.005, in subdivisions (a) and (c), mandates registration for a conviction in any other state court of either "any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290," or for "any person who would be required to register while residing in the state of conviction for a sex offense committed in that state."[4] North Carolina General Statute, section 14-202.1, of which petitioner was convicted, while "similar to section 288(c)(1)" in California, is "far broader," in that "it may be accomplished without any touching, or attempted touching, of the minor," whereas a violation of section 288, subdivision (c)(1), which proscribes lewd acts committed on a child of 14 or 15 years by a person at least 10 years older, requires the " ' "touching" of an underage child committed with the intent to sexually arouse either the defendant or the child.' " (*People v. Murphy* (2001) 25 Cal.4th 136, 145–146, quoting *People v. Martinez* (1995) 11 Cal.4th 434, 442; see also *People v.*

[4] Section 290.005 reads in full: "The following persons shall register in accordance with the Act:

"(a) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, including offenses in which the person was a principal, as defined in Section 31.

"(b) Any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

"(c) Except as provided in subdivision (d), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.

"(d) Notwithstanding subdivision (c), a person convicted in another state of an offense similar to one of the following offenses who is required to register in the state of conviction shall not be required to register in California unless the out-of-state offense contains all of the elements of a registerable California offense described in subdivision (c) of Section 290:

"(1) Indecent exposure, pursuant to Section 314.

"(2) Unlawful sexual intercourse, pursuant to Section 261.5.

"(3) Incest, pursuant to Section 285.

"(4) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in Section 290.019, and the department is able, upon the exercise of reasonable diligence, to verify that fact.

"(5) Pimping, pursuant to Section 266h, or pandering, pursuant to Section 266i."

Thomas (2007) 146 Cal.App.4th 1278, 1291–1292.)[5] He adds that neither the least adjudicated "statutory elements" of the North Carolina statute nor the "actual record of conviction" proves that his conviction qualifies as a registerable offense under section 290.005. (See *People v. Guerrero* (1988) 44 Cal.3d 343, 355; *In re J.P.* (2009) 170 Cal.App.4th 1292, 1299.) The result, he claims, is that his "North Carolina conviction" is "clearly broader than section 288[, subdivision] (c)(1) or any other relevant California statute, and thus, does not implicate the registration requirements of section 290.005."

Without the necessity of deciding the nature and scope of information a court may consider in determining if a conviction from a foreign jurisdiction triggers registration under section 290.005, we find that the allegations and admissions in the petition alone establish that plaintiff was convicted of an offense that requires registration in California. Plaintiff alleged that his conviction in North Carolina is based upon an act of "consensual sexual intercourse" with a girl "who was then 14 1/2" years old. Although plaintiff asserted that the North Carolina judgment of conviction did not order him to register as a sex offender, and he "never registered in North Carolina," according to the allegations in the petition he did register in California and has continued to do so. He has also acknowledged that he has a "duty to register under North Carolina law" which terminates in March of 2010, and if he "were residing in North Carolina he would be required to register there." Further, he "concedes that his offense of taking indecent liberties with a minor [North Carolina General Statute 14-202.1], if committed in California, would have been punishable as a violation of 288(c)(1), lewd act with a minor."

In our review, we cannot ignore the undisputed disclosures in the petition and accompanying documents. To the contrary, "We accept the allegations of the petition and complaint as true unless contradicted by facts of which the court may take judicial notice." (*Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 786; see also *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d

[5] " '[Penal Code S]ection 288 is violated by "any touching" of an underage child accomplished with the intent of arousing the sexual desires of either the perpetrator or the child.' [Citation.]" (*People v. Mullens* (2004) 119 Cal.App.4th 648, 662.)

793, 795; *Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd*. (1999) 75 Cal.App.4th 327, 330.) We decide the case in accordance with the undisputed factual allegations in the petition. (*In re Serrano* (1995) 10 Cal.4th 447, 455.) When reviewing the dismissal of a petition for writ of mandate which alleged the plaintiff was deprived of his constitutionally protected property interest in continued employment due to a termination in accordance with a grievance procedure that failed to satisfy the requirements of due process, the court in *Jones v. Omnitrans* (2004) 125 Cal.App.4th 273, 277–278, pointed out: "We give the petition a reasonable interpretation, reading it as a whole and viewing its parts in context. We deem to be true all material facts that were properly pled, as well as all facts that may be inferred from those expressly alleged. [Citation.] We also accept as true all recitals of evidentiary facts contained in exhibits attached to the petition." (See also *Johnson v. State Water Resources Control Bd.* (2004) 123 Cal.App.4th 1107, 1110.) We further accept as conclusive the concessions of plaintiff, both in the pleading and at oral argument, even as against any contrary allegations in the pleading. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 18; *Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989–990; *Addy v. Bliss & Glennon* (1996) 44 Cal.App.4th 205, 218.)

Established by the uncontradicted allegations and acknowledged facts in the petition is the commission by plaintiff of an offense in North Carolina that included an act of consensual sexual intercourse with a minor under age 16. Thus, the out-of-state offense, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290 – that is, a violation of section 288, subdivision (c)(1), which punishes lewd or lascivious acts with a minor who is 14 or 15 years old when the defendant is more than 10 years older than the minor.[6] An act of sexual intercourse with a child 14 or 15 years old is a lewd or lascivious act under section 288, subdivision (c)(1). (See *People v. Warner* (2006) 39 Cal.4th 548, 557*; People v. Fox* (2001) 93 Cal.App.4th 394, 399.) Also conceded by plaintiff and thereby

[6] Plaintiff's date of birth of December 23, 1957, is also conclusively established in the record.

established is that he would be required to register while residing in the state of North Carolina for his conviction of a sex offense committed in that state. (See *Mack v. State Bar* (2001) 92 Cal.App.4th 957, 961.) We need not go beyond the allegations and admissions in the petition to conclude that based upon the North Carolina conviction plaintiff has a duty to register as a sex offender in California pursuant to both subdivisions (a) and (c) of section 290.005.

II. Mandatory Registration as a Violation of Equal Protection.

We turn to plaintiff's contention that the mandatory imposition upon him of the sex offender registration requirements of section 290 violates his equal protection rights as articulated in our high court's opinion in *Hofsheier, supra*, 37 Cal.4th 1185. He argues that "two groups" of offenders are "similarly-situated," yet treated in an "unequal manner." Plaintiff suggests that the two similarly situated groups are: first, those who have been convicted of "consensual sexual intercourse with 14- and 15-year-old" minors in violation of section 261.5, subdivision (d)), and receive the more favorable treatment of discretionary registration; and the second group, in which he is included, of "those convicted of consensual sexual intercourse or other consensual sexual acts, with the same minors," under section 288, subdivision (c)(1), and are subject to mandatory registration. He therefore maintains that the *Hofsheier* ruling should "be applied directly to this case." (*Hofsheier, supra,* at pp. 1193–1196.)

The tangle of cross-references, tangents, parentheses, and elaborations that is section 290, has at its core the declaration that "[e]very person described in subdivision (c) . . . shall be required to register" as a sex offender. (§ 290, subd. (b).) Subdivision (c) then lists code sections whose violation automatically subjects the offender to the registration requirement. In a 1994 amendment to section 290 (Stats. 1994, ch. 867, § 2.7, p. 4390, former § 290, subd. (a)(2)(E)), the Legislature extended the scope of sex offender registration to provide for discretionary registration. Thus, courts now have discretion to order registration for a conviction of any offense not subject to mandatory registration, if the court finds the person committed the offense " 'as a result of sexual

compulsion or for purposes of sexual gratification.' " (*Hofsheier, supra,* 37 Cal.4th 1185, 1197.)

The analytic starting point for our examination of the equal protection ramifications of the sex offender registration scheme as applied to the present case is *Hofsheier*, in which our Supreme Court held that the mandatory lifetime sex offender registration requirement of former section 290, subdivision (a)(1)(A) (current section 290, subdivision (c)), as applied to a 22-year-old man who was convicted by plea of violating section 288a, subdivision (b)(1), for participating in voluntary oral copulation with a 16-year-old girl, violated equal protection principles. (*Hofsheier, supra,* 37 Cal.4th 1185, 1192–1194, 1207.) The focus of the court's equal protection analysis was upon the distinction between "persons who are convicted of voluntary oral copulation . . . , as opposed to those who are convicted of voluntary intercourse with adolescents in [the] same age group . . . ." (*Id.* at pp. 1206–1207.) In short, sexual intercourse was not subject to the mandatory registration requirements, whereas oral copulation was.

The court in *Hofsheier* declared that, " 'The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.' [Citations.]" (*Hofsheier, supra*, 37 Cal.4th 1185, 1199.) " 'The Equal Protection Clause . . . imposes a requirement of some rationality in the nature of the class singled out.' [Citations.]" (*Ibid*.) "Under the equal protection clause, we do not inquire 'whether persons are similarly situated for all purposes, but "whether they are similarly situated for purposes of the law challenged." ' [Citations.]" (*Id.* at pp. 1199–1200.) The court concluded that section 288a, subdivision (b)(1) and section 261.5, both of which proscribe sexual conduct with minors of the same age, are " 'sufficiently similar to merit application of some level of scrutiny to determine whether distinctions between the two groups justify the unequal treatment.' [Citation.]" (*Hofsheier, supra,* at p. 1200.) Moving to the second phase of the equal protection examination, the court found no rational basis for a classification which required lifetime registration for a sex offender convicted of voluntary oral copulation with a 16-year-old minor, but granted discretion to

impose registration for a person convicted of voluntary sexual intercourse with a minor of the same age. (*Id.* at pp. 1201–1207.) The court therefore held "that the statutory distinction in section 290 requiring mandatory lifetime registration of all persons who, like [the] defendant here, were convicted of voluntary oral copulation with a minor of the age of 16 or 17, but not of someone convicted of voluntary sexual intercourse with a minor of the same age, violates the equal protection clauses of the federal and state Constitutions." (*Id*. at p. 1207.)

The *Hofsheier* opinion explicitly and carefully limited the scope of its declaration of constitutional invalidity to mandatory sex offender registration for voluntary acts of oral copulation with a minor 16 or 17 years of age in violation section 288a, subdivision (b)(1), as compared with discretionary registration for a conviction of voluntary sexual intercourse with a 16- or 17-year-old minor (§ 261.5): "The specific equal protection issue we face here involves the adult offender convicted under section 288a(b)(1) of a voluntary sexual act with a minor 16 years or older, a group that includes the defendant. State law requires all such offenders to register for life as a sex offender. In contrast, an adult offender convicted of voluntary sexual intercourse with a minor 16 years or older is not subject to mandatory registration. The issue is whether this distinction violates the equal protection clause of the Fourteenth Amendment to the United States Constitution or of article I, section 7 of the California Constitution." (*Hofsheier, supra,* 37 Cal.4th 1185, 1198; see also *id.* at pp. 1192, 1194–1201, 1204–1207; *People v. Cavallaro* (2009) 178 Cal.App.4th 103; *People v. Anderson* (2008) 168 Cal.App.4th 135, 141; *People v. Hernandez* (2008) 166 Cal.App.4th 641, 648.) Nevertheless, in the aftermath of the *Hofsheier* opinion, cases have grappled with the extent to which it applies to mandatory registration for a litany of other sex offenses. We perceive distinctions between the offenses considered in *Hofsheier* and those at issue in the present case that persuade us to find no equal protection violation in the imposition of a duty of mandatory registration upon plaintiff.

In *People v. Anderson, supra,* 168 Cal.App.4th 135, 139 (*Anderson*), the court was presented with essentially the same factual context for the defendant's claim that he was

"denied equal protection by being subjected to mandatory registration as a sex offender under section 290." The defendant in *Anderson* was convicted of violating section 288, subdivision (c)(1), and relied on *Hofsheier* to contest mandatory registration. The court examined the *Hofsheier* opinion and decided that "[t]he holding in *Hofsheier* does not mandate a similar conclusion here." (*Anderson, supra,* at p. 141.) The court relied on a number of factors to conclude that an extension of *Hofsheier* to a section 288, subdivision (c)(1) conviction was unwarranted, one of which was the specified limitation in the high court's opinion "that its analysis was limited to an equal protection challenge involving mandatory registration for one convicted of voluntary oral copulation with a minor 16 or 17 years old (§ 288a, subd. (b)(1))." (*Anderson, supra,* at p. 141.)

More significantly, the court in *Anderson* explained: "In this instance, we are dealing with mandatory registration based on a conviction under section 288[, subdivision] (c)(1), i.e., committing a lewd act on a child who is 14 or 15 years old where the perpetrator is at least 10 years older than that child. Not only does that particular provision contain specific protection for minors of an age group younger than the victim involved in *Hofsheier,* it also (unlike § 288a) contains a specific intent requirement. And, unlike *Hofsheier,* there is no relevant similarly situated group for which mandatory registration is not required that may serve as the basis for an equal protection challenge here. An adult who is at least 10 years older than the victim who commits a sex offense of oral copulation on a 14- or 15-year-old minor victim may be charged with a violation of section 288[, subdivision] (c)(1), just as defendant was charged in this case. Defendant's group, contrary to his argument here, is not similarly situated with those convicted of voluntary copulation of a 16- or 17-year-old victim in violation of section 288a, subdivision (b)(1). Defendant's equal protection challenge thus fails because he cannot establish that he, by virtue of his section 288[, subdivision] (c)(1) conviction and the mandatory registration resulting therefrom, is subjected to unequal treatment because there is a similarly situated group for which no such mandatory registration is a consequence of the sex offense conviction." (*Anderson, supra*, at pp. 142–143; see also *People v. Cavallaro, supra,* 178 Cal.App.4th 103, 112.) "The higher mental state

required for a conviction under section 288 is a distinction that is meaningful in deciding whether a person convicted under that statute is similarly situated with one convicted under section 261.5." (*People v. Cavallaro*, *supra*, at p. 114.)

The court in *Anderson* also noted that in contrast to *Hofsheier*, " 'the nature of the sexual act was not determinative' " of whether mandatory registration was imposed: " 'whether sexual intercourse or oral copulation took place, his conduct subjected him to mandatory registration under the Penal Code.' [Citation.] [¶] Based upon the foregoing, we conclude that the reasoning of the Supreme Court in *Hofsheier* is inapposite here. Accordingly, we reject defendant's claim that mandatory registration as a consequence of his conviction under section 288[, subdivision] (c)(1) is unconstitutional." (*Anderson, supra,* 168 Cal.App.4th 135, 144.)

The resolution reached in *Anderson* properly takes account of the prudent fundamental principle that in equal protection analyses the courts should avoid an assessment of the comparative gravity of distinctive criminal offenses and the commensurate punishment selected for them. "The matter of defining crimes and punishment is solely a legislative function." (*People v. Superior Court* (*Perez*) (1995) 38 Cal.App.4th 347, 361.) "Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think." (*Williamson v. Lee Optical Co.* (1955) 348 U.S. 483, 489; *Kasler v. Lockyer* (2000) 23 Cal.4th 472, 482.) " ' "[S]ubject to the constitutional prohibition against cruel and unusual punishment, the power to define crimes and fix penalties is vested exclusively in the legislative branch." [Citations.]' [Citation.]" (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 552; see also *People v. Thompson* (1994) 24 Cal.App.4th 299, 304.) " 'The Legislature is responsible for determining which class of crimes deserves certain punishments and which crimes should be distinguished from others. As long as the Legislature acts rationally, such determinations should not be disturbed.' [Citation.]" (*People v. Wilkinson* (2004) 33 Cal.4th 821, 840, quoting from *People v. Flores* (1986) 178 Cal.App.3d 74, 88.) The state may draw " 'distinctions between different groups of individuals' " as long as " 'the classifications created bear a rational relationship to a

legitimate public purpose.' [Citation.]" (*People v. Chavez* (2004) 116 Cal.App.4th 1, 4.) " 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. . . .' [Citations.]" (*People v. Silva* (1994) 27 Cal.App.4th 1160, 1169.) " ' "Where . . . there are plausible reasons for [the [L]egislature's] action, our inquiry is at an end." [Citation.]' [Citation.]" (*People v. Malfavon* (2002) 102 Cal.App.4th 727, 739.)

We agree with the rationale in *Anderson* and conclude that for purposes of the mandatory registration law plaintiff has not placed himself in a classification similar to those who have been convicted of consensual sexual intercourse with 14-and 15-year-old minors in violation of section 261.5, subdivision (d)). His conviction of lewd acts with a minor, a violation of section 288, subdivision (c)(1), encompasses sexual intercourse, oral copulation or other lewd acts. A further glaring dissimilarity in section 288 is that commission of a lewd act must be " 'accomplished with the intent of arousing the sexual desires of either the perpetrator or the child.' [Citation.]" (*People v. Mullens, supra,* 119 Cal.App.4th 648, 662; see also *People v. Thomas, supra,* 146 Cal.App.4th 1278, 1291–1292.) While some sex offenses, including sexual intercourse with 14- and 15-year-old minors require a showing of only general intent, that is, the intent to commit an act " 'without reference to intent to do a further act or achieve a future consequence,' [citation]" "lewd or lascivious conduct in violation of section 288, subdivision (a), on the other hand, requires 'the *specific intent* of arousing, appealing to, or gratifying the lust of the child or the accused.' [Citation.]" (*People v. Warner, supra,* 39 Cal.4th 548, 557.) " '[T]he "gist" ' of the crime section 288 defines is 'the defendant's intent to sexually exploit a child, not the nature of the offending act. [Citation.]' [Citation.]" (*People v. Murphy, supra,* 25 Cal.4th 136, 146.) The Legislature may have legitimately decided that mandatory registration is appropriate for those who have exhibited the requisite specific intent in the commission of lewd acts, while it is not for others who have committed other, albeit similar crimes with only a general intent.

Finally, "there is a threshold age requirement for the offender under section 288(c)(1): the defendant must be at least 10 years older than the minor victim. The age of

a defendant may provide a meaningful distinction in providing for different treatment of criminal offenses in certain instances. [Citation.] The age prerequisite under section 288(c)(1) is not present under section 261.5, subdivision (d), where the defendant need only be 21 years of age. The Legislature could have properly concluded that it was necessary to specifically prohibit sexual conduct between a 14 or 15 year old and an adult at least 10 years older and to include mandatory sex offender registration based upon a conviction for the offense, because of the potential for predatory behavior resulting from the significant age difference between the adult and the minor." (*People v. Cavallaro, supra,* 178 Cal.App.4th 103, 114.) We therefore find that plaintiff has failed to establish that mandatory registration as imposed upon him violates equal protection guarantees.

Accordingly, the judgment is affirmed.

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Dondero, J.

We concur:

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Marchiano, P. J.

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Margulies, J.